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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,597	10/01/2003	Dominic F. DeLaquil	DELD101	8229
7590 08/30/2007 ROBERT L. SHAVER DYKAS, SHAVER & NIPPER, LLP P.O. BOX 877 BOISE, ID 83701-0877			EXAMINER SHAPIRO, JEFFERY A	
			ART UNIT 3653	PAPER NUMBER
			MAIL DATE 08/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/677,597

Applicant(s)

DELAQUIL, DOMINIC F.

Examiner

Jeffrey A. Shapiro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 7 and 15-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7 and 15-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no mention in the specification of the menu being in the form of a "hardcopy".

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 6, 7 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al (US 6,859,215 B1).

As described in Claims 1-4, 6, 7 and 18, Brown discloses a menu (62, 64, 66, 68, 72, 74, 76, 82, 94 or 98) which have indicators for indicating adherence to various diets

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(such as Kosher, Vegan Heart Healthy or Organic. See figures 4, 5 and 6a-c, which allows a customer to choose ingredients to be compliant with a particular diet plan, for a restaurant kitchen to prepare. See also figure 2, elements 36, 46 and 49 and col. 5, lines 3-40. Further regarding Claim 14, note col. 5, lines 48-67 and col. 6, lines 1-10 that describes listing diets on separate menus with compliance to a particular diet, with various items distinguished from others. For example, in col. 5, lines 65-67, items that do not satisfy the criteria of a particular diet or preference are "graphically distinguished."

Note that the last paragraph of Claim 1 states:

"so that said customer [may] need only select a food item and a diet indicator, and by those two choices be presented with said food selection prepared in a manner compliant with a selected diet and nutrition plan [selected by said customer], with ingredients, condiments, side dishes, and food preparation methods being automatically selected based on said customer's selection of diet and nutrition plan."

Claim 18, last paragraph states:

"so that said customer need only make two choices to control a number of factors about a food item, such as ingredients, condiments, side dishes, and food preparation methods, with the two choices being to select a food item and a graphic symbol of a diet and nutrition plan, and by those two choices be presented with said food selection prepared in a manner compliant with a selected diet and nutrition plan, with ingredients, condiments, side dishes, and food preparation methods being automatically selected based on said customer's selection of diet and nutrition plan."

These limitations in the last paragraphs of Claims 1 and 18 are considered to be intended use language and therefore have no patentable weight.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Tsai et al (US 6,016,741) and further in view of Mueller et al (US 5,235,509).

Regarding Claim 15, Brown does not expressly disclose, but Mueller discloses using a menu, as illustrated in figure 7 and discussed at col. 13, lines 5-28, in the form of a touch screen with individual touch areas for individual food items, such as hamburgers or chicken, for example. Mueller also discloses at col. 13, lines 16-21, that pressing different function boxes can cause different menus to be displayed.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have used a single button or touch area, as taught by Mueller, to allow a customer to choose a menu, such as a heart-healthy or a low carbohydrate menu, and then to represent each single item on each menu, such as hamburgers, with another single button, for the purpose of simplifying the operation of Brown's menu for customers using Brown's menu system.

One ordinarily skilled in the art would have been led to create such a menu based upon the disclosure of Mueller's touch screen and Brown's menu having various diet indicators, since Mueller's touch screen disclosure and discussion would lead one ordinarily skilled to simplify the choosing of Brown's numerous menu items through single touch area/button means, each button representing a single item on a specialty menu organized by diet, each menu also accessible by depressing a single button.

With regards to Claim 17, Brown discloses the menu generating system described above. Brown further discloses a menu system that incorporates customer preferences with regards to food preparation techniques. See col. 6, lines 38-42.

Regarding Claim 15, Brown does not expressly disclose, but Tsai discloses an electric grill, also known under the trademark "the George Foreman Grill", for preparing meats/fish such that fats naturally drain away from said meat/fish. See Abstract of Tsai.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have used Tsai's electric grill having grease drain-off capability in a kitchen that services customers using Brown's menu system.

The suggestion/motivation would have been to provide an option for making meats more "heart healthy" by draining away excess fats. See again, Tsai's abstract and Brown's figure 4, noting the column "heart smart" in row (62).

Regarding Claim 16, it would have been obvious to one of ordinary skill to have trained restaurant staff in the use of the menu system and the various diet plans and preferences that are available. The suggestion/motivation would have been to better enable customers to work with the menu and to choose food items that better fit their nutritional goals.

### ***Response to Arguments***

7. Applicant's arguments with respect to Claims 1-4, 6, 7 and 15-18 have been considered but are moot in view of the new ground(s) of rejection.

Again, note that Brown discloses a customer presenting preferences, after which the computer presents a menu for the customer to choose items. See col. 5, lines 7-15.

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Brown discloses at col. 5, lines 16-18 that "when no food preferences are designated, a food menu of all food menu items without food preference designation may be provided." In other words, the menu is provided prior to the ordering of the items.

*Note that when a customer chooses a food preference through the diet indicator in the form of a word such as kosher or vegan, the menu having those items is necessarily displayed. See also figure 2, element (36) which indicates "specialized food menus". Even if Brown discloses specifying a particular menu having one item under a particular diet, it is considered to be inherent that once the diet indicator is chosen, that a particular menu having various items are displayed from which to choose from. Even if such a menu allows choices at the ingredient level, the structure and function is substantially the same as Applicant's claimed system because indicating a choice such as hamburger, i.e, a big mac, can be considered to be enough of a descriptor to a kitchen to make up a standard hamburger with lettuce, ketchup and mayonnaise, for example. It would be the same as If one were to indicate "no mayonnaise". The kitchen could still construe that as no mayonnaise on any item chosen as well as only on the one item. Brown discloses a menu at figure 4 which describes the ingredients in one column and whether said ingredients are allowed to be included in a particular diet such as kosher or vegan, in the columns at the right. This structure is considered to be an "indication" through the presentation of a "no" or "yes" indicator next to the ingredient as to the diet the ingredient is allowed to be used for. Therefore, Brown is considered to meet the limitations of Applicant's claims as currently amended.*

Regarding Applicant's claim limitations recited in the last paragraphs of independent Claims 1 and 18, the term "so that said customer" indicates intended use language. Such language carries no patentable weight and is therefore ignored.

Nonetheless, regarding Independent Claim 15, newly added Mueller teaches simplifying a menu by offering a single button for one of several menus, and then offering individual buttons for each item selection on each menu. Therefore, it would have been obvious to simplify Brown's menu such that by depressing a single button, the customer would indicate the selection of a particular menu adhering to a particular diet, then indicating a particular item on said menu indicating a specific item, such as a hamburger, for example.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS

August 24, 2007

  
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